

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JESSE GARDUNO.

Plaintiff,

CASE NO. 13cv19-WQH-BGS
ORDER

EDGAR ROGEL; J. DUENAS; L. CESENA; R. FREGOSO; and SHEILA NAGARAJ.

Defendants.

HAYES, Judge:

On January 3, 2013, Plaintiff initiated this action by filing a Complaint containing *Bivens* and RICO claims against all Defendants. (ECF No. 1). Plaintiff alleged that “Defendants exhibited a reckless indifference and wanton disregard for [his] First, Fourth, and Fifth Amendment rights” by stopping him at the border and subsequently bringing criminal charges against him. *Id.* at 3.

On July 16, 2013, Defendants filed the Motion to Dismiss, which stated: “Federal Defendants ... bring its motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.” (ECF No. 7 at 1). In the Memorandum of Points and Authorities, Defendants moved for dismissal of the RICO claim (claim two) as to all Defendants, and dismissal of the *Bivens* claim (claim one) only as to Defendant AUSA Naganaj. (ECF No. 7-1 at 4).

28 Plaintiff did not file an opposition or otherwise respond to the Motion to Dismiss.

1 On August 21, 2013, the Court issued an Order granting Defendants' unopposed
2 Motion to Dismiss, and dismissing the Complaint without prejudice. (ECF No. 8).
3 Later that day, the Clerk of the Court issued Judgment in favor of Defendants. (ECF
4 No. 9).

5 Federal Rule of Civil Procedure 60(a) provides: “The court may correct a clerical
6 mistake or a mistake arising from oversight or omission whenever one is found in a
7 judgment, order, or other part of the record. The court may do so on motion or on its
8 own, with or without notice.” Fed. R. Civ. P. 60(a).

9 Pursuant to the unopposed Motion to Dismiss filed by Defendants and Rule
10 60(a), the Court hereby **VACATES** the August 21, 2013 Judgment (ECF No. 9). The
11 Clerk of the Court shall reopen the case. The August 21, 2013 Order (ECF No 8) is
12 amended as follows: "IT IS HEREBY ORDERED that the Motion to Dismiss filed by
13 Defendants (ECF No. 7) is GRANTED. Claim one of the Complaint is DISMISSED
14 without prejudice as to Defendant AUSA Nagaraj. Claim two of the Complaint is
15 DISMISSED without prejudice as to all Defendants."

IT IS SO ORDERED.

17 | DATED: August 26, 2013

William Q. Hayes
WILLIAM Q. HAYES
United States District Judge